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April 18, 2005

VIA FACSIMILE & OVERNIGHT DELIVERY

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Applications of Nextel Communications, Inc., and Sprint Corporation, for Consent to the Transfer of Control of Entities Holding Commission Licenses and Authorizations Pursuant to Sections 214and 310(d) of the Communications Act, WT Docket No. 05-63

Dear Secretary Dortch:

The New Jersey Division of the Ratepayer Advocate ("Ratepayer Advocate") filed its Petition to Deny the above referenced Applications by Nextel Communications, Inc. ("Nextel"), and Sprint Corporation ("Sprint")(jointly "Applicants"), on March 30, 2005. On April 11, 2005, the Applicants filed their opposition to the various Petitions to Deny and comments asking for imposition of conditions in order to approve the filing. The Ratepayer Advocate has reviewed the opposition filed by the applicants and herein submits its reply to that opposition.

In December 2004, Sprint and Nextel agreed to combine assets and operations, forming the S-N Merger Corp., a wholly-owned subsidiary of Sprint. The resulting entity would be one of the largest wireless carriers in America, offering wireless broadband and integrated communications services to consumers, businesses, and government customers. As part of the merger process, Sprint intends to spin-off its incumbent local exchange carrier to Sprint/Nextel shareholders.[1] On February 8, 2005, Sprint and Nextel submitted their merger application to the Federal communication Commission ("FCC").

The Ratepayer Advocate's attested basis seeking denial of the Applications focused on the ultimate potential adverse effects that consolidation of two major wireless carriers could impose on the wireless competitive landscape. As FCC Commissioner Copps recognized in his dissent on the approval of the AT&T/Cingular merger:

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[1] Sprint/Nextel Application for Transfer of Control, Public Interest Statement at

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> Overall, I believe that the merger will not reduce intramodal competition in most markets to dangerous levels. It will, however, reduce this competition to some extent. The number of national carriers will shrink to five. A major competitor will disappear in hundreds of markets. The FCC has always been proud of the level of competition in the wireless market and of the fact that it has continuously grown. Here we create the potential for wireless competition to shrink, so we must now be far more vigilant to protect consumers. We are drawing down on the storehouse of intramodal competition that industry investment and wise FCC policy in the 1990s created. With less competition left in the storehouse by today's order, we need to be constantly monitoring, analyzing and preparing ourselves to deal with any competitive threats arising in the aftermath of this transaction.[2]

The Ratepayer Advocate asks that the FCC deny the Applications unless appropriate conditions are imposed that protect competition in the wireless carrier market, promote timely deployment of advanced services, and prevent unwarranted consumers charges.

Issues of concern to consumers raised by numerous interested parties include the effects of market concentration, roaming agreements, interoperability of technologies. spectrum aggregation, spin-off of the Sprint ILEC, compliance with the E911 initiative, consumers' benefit from the anticipated synergies, and truth-in-billing. The Ratepayer Advocate's comments on each follow:

Market Concentration

The proposed merger would reduce the number of national carriers from five to four. The above referenced alarm by Commissioner Copps becomes increasingly relevant. The Ratepayer Advocate believes that, in light of the continuing concentration in the wireless market caused by the recent AT&T/Cingular merger and the proposed Sprint/Nextel merger, which would reduce the number of national wireless carriers to only four, the FCC is obliged to continue to monitor carefully the wireless industry to detect and to prevent anti-competitive actions. With each successive merger, the need for regulatory scrutiny over the increasingly concentrated wireless market becomes more important to ensure that consumers in all markets are adequately protected.

According to the filing of Community Technology Centers' Network ("CTCNet"), the combined company would control 100% of available Broadband Radio Service ("BRS") spectrum in 24 major market areas located in the top 50 Basic Trading Areas ("BTAs"), and over 70% of the BRS in 66% of these markets.[3] CTCNet points out that the emerging wireless broadband market is

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[2] Applications of AT&T Wireless Services, Inc. and Cingular wireless Corporation for Consent to Transfer of Control of Licenses and Authorizations, Memorandum Opinion and Order, FCC 04-255, WT Docket No. 04-70, 04-254, and 04-343, released October 26, 2004, Statement of FCC Commissioner Michael J. Copps, approving in part, dissenting in part, at 2-3.

[3] Petition to Deny of Community Technology Centers Network, at ii.

a new market, distinct from the cellular, PCS , xDSL, and cable markets. The Ratepayer Advocate submits that to allow one company to control a nascent wireless broadband market could endanger the development and deployment of new wireless broadband technologies.

Roaming Agreements

The proposed merger would endanger the access of rural consumers to the wireless network and put them at risk of being cut off from the services that urban consumers take for granted. The FCC should heed and address the significant concerns about roaming that commenters raise. The merger increases the risk that rural and regional carriers will be discriminated against, which would jeopardize the prices, quality and availability of wireless service in rural areas.[4]

The Ratepayer Advocate submits that the combined company will have the potential to exercise market power to refuse to enter into roaming agreements with small carriers, thus making it impractical for these smaller companies to retain customers. With each successive consolidation in the wireless market, the FCC should become increasingly wary of the implications of market concentration for the goal of fair and effective competition. The Ratepayer Advocate urges the FCC to require the Applicants to submit detailed information about their intentions, post-merger, regarding roaming agreements. The quality, prices and availability of service for rural customers are at risk. The FCC should condition approval for the merger on the Applicants' explaining fully their plans for developing roaming agreements at fair and reasonable rates and conditions. Furthermore, the FCC should incorporate enforceable sanctions should the Applicants engage in anti-competitive behavior toward regional and rural carriers. Absent FCC intervention, the proposed merger would jeopardize the goal of increased competition.

Contrary to the Applicants' assertions regarding the FCC's *Roaming NPRM* and request for

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[4] "Customers of small and rural carriers need to be able to roam seamlessly onto the network of larger carriers, and customers of large and urban carriers must be able to trust that their wireless service will not end at the edge of a metropolitan area. Roaming is essential to the circulation of the American population throughout the country." (Comments of Rural Cellular Association at 5)

"National carriers could at some time in the future refuse to sign roaming agreements with regional, mid-sized, and rural carriers on reasonable terms, which would effectively preclude customers of those carriers from roaming in the markets of the national carriers. This in turn might have the effect of driving such customers away from such regional/rural carriers, thus forcing these carriers out of business, reducing competition and customer welfare." (Comments of United States Cellular Corporation ("USCC") at 3-4)

According to the USCC, in contrast to the ALLTEL-Western Wireless merger application, the Sprint-Nextel application does not mention roaming agreements at all. USCC asserts this is especially troubling, as facilitation of roaming was a major public interest justification for the ALLTEL-Western Wireless merger. (USCC at 7-8)

According to NY3G Partnership, Sprint/Nextel would have "the ability and incentive to either refuse to enter into roaming arrangements altogether, or to impose unreasonable, nonreciprocal, and discriminatory contractual terms and conditions on competitors." (Comments of NY3G Partnership at 2)

comments about roaming agreements as the appropriate setting for consideration of roaming issues, and not this matter[5], the Roaming NPRM although important does not address sufficiently the specific impact of the proposed transaction on roaming agreements between the Applicants and rural and regional carriers. It is entirely appropriate and essential that the FCC address the impact of the merger on the Applicants' roaming agreements in this proceeding and not defer to disposition in another proceeding.

Interoperability of Technologies

According to the USCC, the proposed merged company should be required to enable the interoperability of "push-to-talk" technologies, video and photo delivery, and SMS delivery to regional carriers.[6] The Ratepayer Advocate opines that without the interoperability of data-based features, consumers will lose significant functionality when roaming. FCC efforts to encourage deployment and use of broadband technology will be impaired if consumers find that data-based uses of telephony are thwarted due to lack of coordination among service providers.

Spectrum Aggregation

As the Consumer Federation of America and Consumers Union ("CFA/CU") observe, "a Basic Trading Area ("BTA") license of the former Multipoint Distribution Service ("MDS") (now Broadband Radio Service, or "BRS") spectrum generally authorizes the use of 78 MHz of spectrum in a market." The combined Sprint/Nextel entity will be licensed for over 130 MHz of wireless communication spectrum in many markets.[7] Indeed, a single entity holding so much spectrum is antithetical to the public interest.[8] Others recommend a threshold to guard against such exclusive control.[9]

The Ratepayer Advocate submits that as the merger is presently structured, the Applicants' monopoly control of 2.5 GHz spectrum in certain markets may create a barrier to entry in the wireless market. As a result, Sprint/Nextel could have few or no new competitors (using this part

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5 Joint Opposition at 11-12.

6 USCC Comments at 1, 11

7 Petition to Deny of Consumer Federation of America and Consumers Union at 7.

8 Id. at 9.

9 "Sprint Nextel should be prohibited from maintaining an attributable interest in a total of more than 48 MHz of licensed or leased EBS/BRS spectrum within any Basic Trading Area, and should be required to divest itself of its EBS/BRS spectrum to the extent necessary to comply with this condition." (NY2G Partnership at 8.

The Sprint Nextel merger will consolidate into the possession of one entity up to 85% of the licensed 2.5 GHz spectrum, leaving much of rural America with no choice of wireless broadband provider. Comments of the National Rural Telecommunications Cooperative at 1-3.

of the spectrum), and thus, potentially, no market discipline. This could lead to anti-competitive behavior and deny consumers the prices, services, and quality that competition yields. The Ratepayer Advocate recognizes that the future of the wireless market and technology is uncertain, but urges the FCC to consider the implications of the Applicants' control of 2.5 GHz for the development of wireless competition and urges the FCC to monitor carefully the evolution of wireless competition.

The FCC addressed a similar concern in the Cingular-AT&T Wireless merger, noting that "spectrum is a necessary resource for wireless carriers to compete effectively."[10] In that matter the FCC required Cingular to divest spectrum in excess of 80 MHz in all areas.[11] The Applicants contend that the proposed merger does not significantly alter the market because Sprint and Nextel have minimal overlapping 2.5 GHz spectrum allocation, and that the more general concerns about the use of the 2.5 GHz spectrum should be addressed in general FCC proceedings rather than in a merger proceeding.[12] They also assert that there is not a 2.5 GHz "market" and that the technology is still under development. Therefore, the Applicants contend that it is premature to discuss market power.[13] Furthermore, the Applicants contend that there are many other (non- 2.5 GHz) alternatives to offer wireless interactive multimedia service ("WIMS"),[14] and that "[i]n the 2.5 GHz band, ample spectrum remains for competitive entry."[15] They further contend that they "intend to use the 2.5 GHz spectrum to deploy high-speed interactive multimedia service."[16] According to the Applicants, the near-nationwide footprint that they will have will enable them to take the risks associated with deploying new technology, which, in turn, will benefit consumers.[17]

The Ratepayer Advocate recognizes that the 2.5 GHz issue is clearly complex, and, at a minimum, merits in-depth consideration by the FCC. The Ratepayer Advocate certainly supports the availability of advanced broadband wireless technology but cautions that the pursuit of this goal should not come at the expense of the development of effective competition.

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10 Cingular-AT&T Wireless Merger Order at paragraph 109.

11 Id. at paragraphs 140-141.

12 Joint Opposition at 16-20.

13 Id. at 20.

14 Id. at 23-24.

15 Id. at 25.

16 Id. at 26.

17 Id. at 25-27.

Spin-off of Sprint Local Division

According to the Communications Workers of America ("CWA"), Sprint's Local Division, which mainly serves rural customers, has for several years effectively subsidized its wireless business. One feature of the proposed merger is a spin-off of this division into an independent ILEC. Communication Workers of America encourages the FCC to require the assets and debts to be divided equitably to ensure the viability of the spun-off ILEC.[18]

The Ratepayer Advocate echoes the concerns of the CWA that rural landline customers might be disadvantaged following the spin-off of the Sprint ILEC if the assets and liabilities are not equitably assigned and allocated between the new merged entity and the local spin-off. The FCC should take the steps necessary to ensure that the spin-off occurs fairly.

The Applicants contend that the CWA's concerns are premature, and that the FCC can address them when the Applicants, at a later date, seek approval to spin off the local operations.[19] However, the Applicants have squarely raised this issue by announcing their intent to spin off the local operations, and, therefore, it is entirely appropriate for the FCC to assess at least some aspects of the implications of such a transaction at this time. Accordingly, in anticipation of this spin-off, the FCC should require the Applicants to maintain comprehensive records of costs and revenues, subject to an outside audit, to facilitate any future regulatory review.

Also, recognizing the anticipated net $12 billion in merger synergies, the FCC should require the Applicants to: (1) record in detail all components of the merger synergies as they occur (e.g., reduced costs, enhanced revenues, and transaction costs) so that, if and when, the local operations are spun off, the timing is not such that the local business bears a disproportionately high share of the one-time integration costs (which occur in the early years) and a disproportionately low share of the recurring savings (which occur into perpetuity); (2) agree to pay for an independent audit of the Applicants' operations as an integral component of its request for regulatory approval of any spin-off of the local operations; and (3) commit to sharing the merger synergies with the spun-off local operations based on the net present value of the synergies. Without this last commitment, it is entirely possible that the Applicants, relying on the most recent year of financial information (and one which might reflect the high one-time, nonrecurring merger transaction costs) will shortchange the local spin-off. The concern is that, in the context of seeking regulatory and investor approval, merger applicants express confidence in their ability to achieve synergies, but in the context of assigning merger synergies to ratepayers (or likely to spin-offs), these same synergies will suddenly become speculative, not "known and measurable." The spin-off should not occur in such a way as to saddle the local operation with merger costs and no merger benefits.

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18 Petition to Impose Conditions of Communication Workers of America at 7-8.

19 Joint Opposition at 16.

Compliance with E-911

According to the Safety and Frequency Equity Competition Coalition ("SAFE Competition Coalition"), the Sprint Nextel merger application does not specify a plan to attain full E911 compliance by December 31, 2005. The SAFE Competition Coalition further asserts that E911 compliance does not appear to be a priority for the proposed merged company.[20]

The Ratepayer Advocate concurs and submits that the FCC should condition approval of the merger upon the Applicants' elaboration of a plan to reach full E911 compliance, and provide for sanctions should the entity fail to achieve full E911 compliance.

Synergies and costs

The Applicants anticipate a net present value of merger synergies of $12 billion (after transaction costs). The Applicants allege that the Sprint-Nextel combination will create substantial synergies between the two firms and that many of these efficiencies will lead to pressure to reduce wireless prices.[21]

In this regard, the Ratepayer Advocate urges the FCC to monitor the proposed merger in light of the potential for harm to consumers and substantial gains for shareholders. FCC should require some of the achieved synergies to be put to use for the consumer, e.g. reaching E911 compliance, expanding deployment of broadband service, and improving the quality of service.

Truth-in-billing

The Ratepayer Advocate submits that the FCC should elicit commitments from Sprint/Nextel that they will voluntarily work with state public utility commissions to ensure that customer bills are clear, not misleading, and easy to understand. Furthermore, before approving the proposed merger, the FCC should require Sprint and Nextel, each, to submit a report that describes and quantifies consumer complaints that are reported to all state public utility commissions and to each of the Applicants separately by each jurisdiction that each Applicant serves. This data should span at least two years and the data should be aggregated by the category of complaints. Finally, the Applicants should describe their plans, with time frames, for addressing the sources of the complaints.

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20 SAFE Competition Coalition Petition to Deny at 10.

21 Joint Declaration of Stanley M. Besen, Steven C. Salop, and John R. Woodbury, on behalf of the Applicants, at para. 66.

CONCLUSION

Accordingly, consistent with the above comments, the Ratepayer Advocate reiterates its plea in the Petition to Deny, that unless Applicants sustain their burden of proof and appropriate conditions are imposed, the transaction is not in the public interest. The FCC must assure that competition will not be harmed with the elimination of a major competitor in the wireless telecommunications service market, that consumers will not be harmed by the reduced competition when the current price competition between the Applicants cease, and that the merged company will market advanced technologies at fair and reasonable prices to consumers.

Respectfully submitted,

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RATEPAYER ADVOCATE

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